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No. 147

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IN THE

**Supreme Court of the United States**

October Term, 1947

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WILLIAM M. LINDENFELD,

*Petitioner,*

—against—

UNITED STATES OF AMERICA,

*Respondent.*

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PETITION AND BRIEF FOR A WRIT OF  
CERTIORARI TO THE UNITED STATES  
CIRCUIT COURT OF APPEALS FOR THE  
SECOND CIRCUIT

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✕ WILLIAM M. LINDENFELD,  
*Petitioner in person.*

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WILLIAM M. LINDENFELD,

*Petitioner,*

—against—

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**PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE SECOND CIRCUIT**

*To the Honorable Chief Justice of the United States and  
the Associate Justices of the Supreme Court of the  
United States.*

Your petitioner, WILLIAM M. LINDENFELD, respectfully prays for a writ of certiorari to the United States Circuit Court of Appeals, for the Second Circuit, to review an order of that Court entered on May 11th, 1948, affirming an order of the District Court of the United States for the Eastern District of New York, entered in that Court on February 25th, 1948, which denied petitioner's motion to set aside criminal indictment filed therein against petitioner on January 21, 1943 as well as the judgment of conviction entered thereon on April 28th, 1943, convicting petitioner of violation of Section 2554, Internal Revenue Code, after trial before the late District Judge Grover M. Moscowitz and a jury.

### Statement of Matters Involved

Petitioner's motion had been predicated upon the ground that the aforesaid criminal indictment had been obtained upon the false, perjured and suppressed testimony of three (3) drug addicts, criminals of long standing, who admittedly testified before the Grand Jury, "that for the mere asking" they obtained prescriptions of petitioner, a physician, for morphine sulphate. While, in truth and in fact as testified on cross examination at the trial, these same three (3) individuals testified, that the only way in which they truly obtained the prescriptions, was, by presenting themselves at petitioner's medical office, posing as patients, feigning illnesses of the heart and like ailments, and that petitioner "after examinations" did prescribe prescriptions of small quantities.

Petitioner upon his motion urged, that that testimony was suppressed from the Grand Jury and the false testimony given the Grand Jury. In addition, petitioner on his motion urged and asserted further vital testimony of his innocence was suppressed from the Grand Jury, namely, the testimony of a Government agent (who had supervised the addicts in obtaining the prescriptions), named Amato, who on two occasions prior to the return of the indictment, himself sought to obtain prescriptions of petitioner, by presenting himself at petitioner's office on two occasions "as a patient", who sought to feign severe heart ailments but who was unable to obtain any prescriptions of petitioner.

Upon petitioner's motion in the District Court the Government filed a short affidavit, simply urging the case moot since petitioner's conviction had been affirmed on appeal and certiorari denied (323 U. S. 761) (because appellant sought to prosecute the Certiorari as a pauper

while not a citizen hence it was disallowed) yet, the Government at no time denied or disputed the grounds of petitioner's motion, even though petitioner's affidavit particularized the aforesaid perjury and suppressed testimony.

## ARGUMENT

### I

The rulings of the Courts below, are clearly contrary to the law as asserted by this Court in, *Fiswick v. United States* (December 9th, 1946).

The pertinent facts in the case at bar, are to a great degree, parallel with the facts in the *Fiswick* case. Namely, petitioner here, is an alien, subject to deportation by reason of the judgment of conviction. Petitioner in the true administration of Justice, is seeking to remove the stigma of the judgment of conviction and restore himself to his medical profession and good name in the community and that he may obtain his Final Papers of citizenship.

Where before the Grand Jury the witness Port testified he obtained the prescriptions for the mere asking, yet on the trial he swore,

"Q. What did you do when you went in on the first occasion and he threw you out? A. I told him I would like an examination. I had severe pain over the heart.

Q. Did anyone tell you to use this method? A. You have got to do that.

Q. You did not say you wanted drugs? A. No."

The other two drug addicts of long criminal standing gave parallel testimony.

Petitioner urged in the Court below, that it was the duty of the prosecutor to disclose all of his evidence to the Grand Jury, and that the suppression of the testimony of John Amato the Government agent who supervised these addicts, and who was unsuccessful in obtaining prescriptions of petitioner on two occasions, nullified the indictment and was an abuse of the office of the prosecution.

In like fashion petitioner urged that the prosecutor suppressed from the Grand Jury, the first exception of Section 2554 of the Internal Revenue Code, which expressly permits physicians (as petitioner) to issue prescriptions for morphine sulphate. Said first exception reading:

#### USE OF DRUGS IN PROFESSIONAL PRACTICE.

"To the dispensing or distribution of any of the drugs mentioned in Section 2550 (a) to a patient by a physician, dentist, or veterinary surgeon registered under Section 3221 in the course of his professional practice only; Provided, such physician, dentist, or veterinary surgeon shall keep a record of all such drugs dispensed or distributed, the date, and the name and address of the patient to whom such drugs are dispensed or distributed to a patient upon whom such physician, dentist, or veterinary surgeon shall personally attend; and such record shall be kept for a period of two years from the date of dispensing or distributing such drugs, subject to inspection as provided in Section 2556."

Petitioner urged in the Courts below and respectfully urges in this Court, that had the three addicts testified truthfully, had the government produced John Amato before the Grand Jury, as by law the Government was required so to do, that the Grand Jury would have been powerless to have returned any indictment in the case at bar, since it is undisputed that the prescriptions were



issued by petitioner, "at his office, after examinations of each and all of the so-called patients and in reliance of their complaints of heart ailments." Indeed, one of such addicts (Sherman) suffered an alleged "heart attack" in petitioner's office.

Petitioner in his motion showed, that he only ascertained the falsity of the testimony before the Grand Jury and suppression of testimony thereat, in June of 1947 when he promptly moved.

Petitioner further sought in the Court below, in aid of the application, a hearing of the application, the taking of testimony and inspection of the Grand Jury minutes, or its inspection thereof by the Court.

Petitioner's application was in all respects summarily denied.

### CONCLUSION

**The Constitution of the United States prohibits the criminal trial based upon an indictment obtained upon false testimony and suppressed evidence.**

**It is respectfully urged that the application for a writ of certiorari should be granted.**

Dated, New York, July 8th, 1948.

Respectfully submitted,

WILLIAM M. LINDENFELD,  
*Petitioner.*